

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment clarifies the training requirements for home- and community-based services (HCBS) brain injury (BI) waiver service providers and direct service staff.

The effect of this amendment is that any provider or direct service worker providing BI waiver services on or before December 31, 2014, will be presumed to be in compliance with the training requirement in effect when the provider or direct service worker began providing services and is not required to complete the Department’s BI waiver training modules. After January 1, 2015, direct service workers will have 60 days to complete the Department’s BI waiver training modules.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 1553C** on July 23, 2014. The Department received comment from one respondent during the comment period.

The respondent’s comment is summarized as follows: Iowa’s brain injury training remains mandatory for direct care staff, but creates an exemption for self-directed personal care service workers and some other types of direct service workers under the current rule. The discrepancy in regulation between agencies and individuals will still be the same—agencies will be required to fulfill mandatory training while individuals transferred into the consumer choices option (CCO) will fall under the exemption. As an unintended consequence, the unbalanced application of this rule may create more barriers to agency service providers in Iowa who are held to the requirement. It was suggested that voluntary training for direct care staff be patterned after states like Michigan and North Carolina, which currently have voluntary training provisions. As an alternate suggestion, the exemption provisions could be eliminated so that all direct care workers are required to complete the training.

The Department’s response to the comment is that the discrepancy described in the comment is comparing enrolled Medicaid providers to private individuals employed by Medicaid members through the BI waiver consumer choices option to provide identified services, including self-directed personal care services, self-directed community supports and employment, and individual-directed goods and services. To clarify, there is no relationship between Medicaid and an employee hired by the member to provide the self-directed services. The individual employee does not enroll in Medicaid, nor does Medicaid have oversight of the services delivered by the employee. It is at the sole discretion of the member to hire and supervise employees who the member feels are most qualified to provide needed services.

In conclusion, the Department may suggest voluntary training of employees providing services under the CCO but will not supersede the member’s employer authority by requiring training. Anyone who wishes to complete the Department’s BI training may do so at any time, and the members who utilize CCO may choose to require their employees to complete the training. Therefore, the Department did not modify the amendment as published in the Notice of Intended Action as requested by the respondent.

This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 10, 2014.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective November 5, 2014.

The following amendment is adopted.

Amend rule 441—77.39(249A), introductory paragraph, as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Providers shall be eligible to participate in the Medicaid brain injury waiver program if they meet the requirements in this rule and the subrules applicable to the individual service. Beginning January 1, 2015, providers initially enrolling to deliver BI waiver services and each of their staff members involved in direct consumer service must have completed the department's ~~online~~ brain injury training ~~course prior to~~ modules one and two within 60 days from the beginning date of service provision, with the exception of staff members who are certified through the Academy of Certified Brain Injury Specialists (ACBIS) as a certified brain injury specialist (CBIS) or certified brain injury specialist trainer (CBIST), providers of home and vehicle modification, specialized medical equipment, transportation, personal emergency response, financial management, independent support brokerage, self-directed personal care, individual-directed goods and services, and self-directed community supports and employment. Providers enrolled to provide BI waiver services and each of their staff members involved in direct consumer service on or before December 31, 2014, shall be deemed to have completed the required training.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/14.